

JUDICIAL FILIBUSTER TIMELINE **A REVIEW OF SPURNED EFFORTS AT COMPROMISE**

2001

May 9	Terrence W. Boyle first nominated to Fourth Circuit Priscilla R. Owen first nominated to Fifth Circuit Miguel Estrada first nominated to D.C. Circuit
June 19	Charles Pickering first nominated to Fifth Circuit
June 22	Carolyn B. Kuhl first nominated to Ninth Circuit
Nov. 8	Henry W. Saad first nominated to Sixth Circuit David W. McKeague first nominated to Sixth Circuit Susan B. Neilson first nominated to Sixth Circuit

2002

June 26	Richard A. Griffin first nominated to Sixth Circuit
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2003

Jan. 7	Resubmission of nomination of Terrence W. Boyle to Fourth Circuit Resubmission of nomination of Miguel Estrada to D.C. Circuit Resubmission of nomination of Richard A. Griffin to Sixth Circuit Resubmission of nomination of Carolyn B. Kuhl to Fourth Circuit Resubmission of nomination of David W. McKeague to Sixth Circuit Resubmission of nomination of Susan B. Neilson to Sixth Circuit Resubmission of nomination of Priscilla R. Owen to Fifth Circuit Resubmission of nomination of Henry W. Saad to Sixth Circuit Re-nomination of Charles W. Pickering to Fifth Circuit
Feb. 11	Senator Hatch seeks a time agreement on the consideration of Miguel Estrada's nomination. He first offers "8 hours in addition to the 6 [he has] asked for." Senator Dodd refuses. Senator Hatch then offers to "modify it to 10 additional hours." Senator Dodd again refuses. Senator Hatch then proposes to "modify it to 20 additional hours, which would probably be close to 3 more days." Senator Dodd refuses and vows, "There will be objections noted on every request for additional time," no matter how generous the offer. Senator Hatch inquires, "Is the Senator telling me no matter what I offer that Senate Democrats are going to object?" Senator Dodd confirms that "any effort to limit debate will be objected to." When Senator Hatch asks, "Even if I go up to 40 or 50 hours?," Senator Dodd explains, "This is not about the amount of time."
March 6	Cloture fails for Miguel Estrada, 55-44
March 13	Cloture fails for Miguel Estrada, 55-42
March 18	Cloture fails for Miguel Estrada, 55-45
April 2	Cloture fails for Miguel Estrada, 55-44
April 8	Senator Bennett requests a time agreement on the consideration of Judge Priscilla Owen's nomination. Senator Bennett offers 6 hours of additional debate, but Assistant Minority Leader Reid refuses. Senator Bennett then offers 10 hours of additional debate, but Assistant Minority Leader Reid refuses. Senator Bennett then says, "I ask if any number of hours would

be sufficient for the Senator from Nevada." Senator Reid replied, "[T]here is not a number in the universe that would be sufficient."

April 9	William H. Pryor first nominated to Eleventh Circuit
May 6	Hrg. before Subcommittee on the Constitution of the Judiciary Committee "Judicial Nominations, Filibusters, and the Constitution: When a Majority Is Denied Its Right To Consent"
May 1	Cloture fails for Priscilla R. Owen, 52-44
May 5	Cloture fails for Miguel Estrada, 52-39
May 8	Cloture fails for Miguel Estrada, 54-43 Cloture fails for Priscilla R. Owen, 53-45
May 9	Introduction of Frist-Miller cloture reform proposal (S.Res. 138) (<u>First Statement by Senator Frist</u>)
May 15	William G. Myers first nominated to Ninth Circuit
June 5	Hrg. before the Rules Committee "Hearing on Senate Rule XXII and Proposals To Amend this Rule" (<u>Second Statement by Senator Frist</u>)
June 24	Rules Committee reports S. Res. 138 by a vote of 10-0 (Democrats boycott markup)
June 27	<u>Third Statement by Senator Frist</u>
July 25	Janice R. Brown first nominated to D.C. Circuit Brett M. Kavanaugh first nominated to D.C. Circuit
July 29	Cloture fails for Priscilla R. Owen, 53-43
July 30	Cloture fails for Miguel Estrada, 55-43
July 31	Cloture fails for William H. Pryor, 53-44
Sept. 4	Miguel Estrada withdraws from consideration for the D.C. Circuit
Oct. 30	Cloture fails for Charles W. Pickering, 53-44
Nov. 6.	Cloture fails for William H. Pryor, 51-43
Nov. 12-14	Forty-hour, around-the-clock debate "Justice for Judges" (<u>Fourth Statement by Senator Frist</u>)
Nov. 12	Majority Leader Frist requests a time agreement on the consideration of Judge Priscilla Owen's nomination. Assistant Minority Leader Reid replies, "So in response to the distinguished majority leader's request, we would not agree to a time agreement on Priscilla Owen of any duration."

The Senate Democrats complain that there has been *too much debate* on the president's judicial nominees and insist that additional debate is a waste of time. Everything has "already been said," they complain, and "there are 100, 200, 300 better ways to spend 30 hours in the Senate than redebate these issues."

Assistant Minority Leader Reid rejects a time agreement on the consideration of Judge Janice R. Brown's nomination.

Nov. 14	Cloture fails for Janice R. Brown, 53-43 Cloture fails for Carolyn B. Kuhl, 53-43 Cloture fails for Priscilla R. Owen, 53-42
2004	
March 12	Resubmission of nomination of William H. Pryor to Eleventh Circuit
April 1	Introduction of Specter protocol (S.Res. 327) Senator Specter proposes a protocol designed to de-politicize the judicial confirmation process and to redress complaints from both sides of the aisle. Within a set time frame, nominees would be given a hearing, reported out of committee, and given a floor vote.
May 10	Thomas B. Griffith nominated to D.C. Circuit
July 20	Cloture fails for William G. Myers, 53-44
July 21	Majority Leader Frist requests a time agreement on consideration of the nominations of Henry W. Saad, and two other nominees to the Sixth Circuit: "I ask the Democratic leadership if it is true that they would not agree to a time agreement on these Sixth Circuit nominations?" Assistant Minority Leader Reid confirmed, "The majority leader is correct."
July 22	Cloture fails for Henry W. Saad, 52-46 Cloture fails for Richard A. Griffin, 54-44 Cloture fails for David W. McKeague, 53-44
Nov. 11	Federalist Society speech on nominations (<u>Fifth Statement by Senator Frist</u>)
2005	
Jan. 4	Majority Leader Frist refuses to acquiesce to the carry over of rule XXII's provisions governing closure of debate and rule V's provisions purporting to carry over the Senate standing rules: "[I]f my Democratic colleagues continue to filibuster judicial nominees, the Senate will face this choice: Fail to do its constitutional duty or reform itself and restore its traditions, and do what the Framers intended. Right now, we cannot be certain judicial filibusters will cease. So I reserve the right to propose changes to Senate rule XXII, and do not acquiesce to carrying over all the rules from the last Congress." (<u>Sixth Statement by Senator Frist</u>)
Jan. 20	Publication of article setting forth the history of the constitutional option and detailing the extensive historical support and bipartisan endorsements of the constitutional option: Martin B. Gold & Dimple Gupta, <i>The Constitutional Option: A Majoritarian Means To Overcome the Filibuster</i> , HARVARD JOURNAL OF LAW & PUBLIC POLICY.
Feb. 14	Resubmission of nomination of Terrence W. Boyle to Fourth Circuit Resubmission of nomination of Janice R. Brown to D.C. Circuit Resubmission of nomination of Richard A. Griffin to Sixth Circuit Resubmission of nomination of Thomas B. Griffith to D.C. Circuit Resubmission of nomination of William J. Haynes to Fourth Circuit Resubmission of nomination of Brett Kavanaugh to D.C. Circuit Resubmission of nomination of David W. McKeague to Sixth Circuit

Resubmission of nomination of William G. Myers to Ninth Circuit
Resubmission of nomination of Susan B. Neilson to Sixth Circuit
Resubmission of nomination of Priscilla R. Owen to Fifth Circuit
Re-nomination of William H. Pryor to Eleventh Circuit
Resubmission of nomination of Henry W. Saad to Sixth Circuit

- March 15 Minority Leader Harry Reid, surrounded by 37 Democratic Senators, threatens to shut down the United States Senate if the majority exercises its constitutional option to override the Democrats' judicial filibusters and advise and consent on President Bush's judicial nominees.
- March 17 Majority Leader Frist sends a letter to Minority Leader Reid in which he explains that he would attempt the constitutional option "only if it were clear . . . that reasonable alternatives are not possible." Majority Leader Frist also expresses his intention to offer a proposal that ends the Democrats' destructive judicial filibusters, while preserving the minority's right to debate and addressing complaints both sides have had with the judicial confirmation process.